2000

The State of Utah v. Richard Wayne Ward : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH, Plaintiff-Respondent, -vs- RICHARD WAYNE WARD, aka MORRIS GUTHRIE, Defendant-Appellant.	Case No. 14276

BRIEF OF RESPONDENT

APPEAL FROM A JURY VERDICT OF GUILTY OF AGGRAVATED ROBBERY IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE PETER F. LEARY, JUDGE

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-vs-	Case No. 14276
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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Richard Wayne Ward, was convicted in a criminal proceeding of aggravated robbery in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge, presiding.

DISPOSITION IN LOWER COURT

Richard Wayne Ward was tried and convicted by a jury of aggravated robbery. The appellant was sentenced for a term of imprisonment in the Utah State Prison as provided for by law.

RELIEF SOUGHT ON APPEAL

Respondent prays that the verdict of the trial court be affirmed.

STATEMENT OF FACTS

On July 2, 1975, at approximately 11:00 a.m. an armed robbery was committed at the Thrifty Drug Store, 4153 South 1700 West, Salt Lake City, Utah. The assailant was later identified by the drug store's cashier as the appellant (Tr.76). Appellant entered the drug store on that warm July morning wearing a jacket, heavy hunting hat, and gold rim sunglasses. The drug store cashier, Sharon Petersen, took special notice of appellant's attire (Tr.70). Appellant approached the cashier's checkstand holding a multi-colored beach towel, as if he intended to purchase it. Appellant then produced a silver colored nickle plated revolver. Pointing the revolver at the cashier, he directed her to place the store's cash in one of the store's green colored money bags. The cashier placed approximately $120.00 in the bag (Tr. 72,74). As the appellant then exited the store, Mr. Roger Arnold, a store customer, observed appellant getting into a green automobile bearing Texas plates (Tr.100). Mr. Arnold wrote down the car's

license number, which was then broadcast over the police radio along with the general description of the automobile.

Officer Don Schindler received the description and license number of the automobile and shortly thereafter discovered the car in Murray, parked on State Street in front of the Playmate Lounge (Tr.6). Officer Schindler along with another officer entered the Playmate Lounge looking for a black male suspect, having received an erroneous description of the suspect over the dispatch. The officers noticed three individuals sitting in a booth on the north side of the lounge and several others around the pinball machines, but saw no black individual (Tr.9).

The officers went in and out of the lounge twice but again did not observe a black suspect. A later description correcting the original mistaken one was broadcast describing the suspect as a white male with dark bushy hair, long sideburns, and a deep tan (Tr.13). With this revised description the officers entered the lounge looking for the suspect. The officers observed a man fitting the description sitting alone at the booth where there had once been two other men (Tr.15). The officers approached appellant requesting his name and identification. Appellant produced a Texas driver's license.

At this point officer Pederson informed appellant of his constitutional rights (Miranda warning) (Tr.26), and then proceeded to search appellant's person (Tr.26). According to Officer Gary Pederson, appellant produced a set of car keys (Tr.27). Then, according to Officer Schindler, appellant denied ownership of the keys and disclaimed ownership of the car (Tr.19). Officer Schindler also testified that appellant was asked if he would mind if the officers checked to see if the keys fit the vehicle and appellant that he would not mind (Tr.20).

Officer Schindler then used the keys obtained from appellant to unlock the door to the green automobile (Tr.185). Shortly thereafter the automobile was searched without a warrant and a revolver, hunting cap, checkstand bag, sunglasses, jacket and multicolored towel were seized in the search.

The seized items were later identified by State's witness Sharon Petersen as being those items either worn or carried by appellant at the time of the armed robbery (Tr.139-145).

The trial court refused to suppress the evidence removed from the green automobile bearing the Texas plates and it is on the issue of the legality of the search and seizure that appellant is appealing.

ARGUMENT

POINT I

APPELLANT LACKS STANDING TO ASSERT FOURTH AMENDMENT RIGHTS IN OBJECTION TO THE SEARCH OF THE GREEN AUTOMOBILE BEARING TEXAS PLATES.

The issue of whether appellant has standing to contest the legality of the search of the automobile hinges on his claim of possessary or proprietary interest in the automobile. In State v. Montayne, 18 Utah 2d 38, 414 P.2d 958 (1966), this Court stated the rule for determining standing to challenge an unlawful search or seizure:

> "In order for appellant to have standing to raise the issue of an unlawful arrest, the sole prerequisite is that he claim a proprietary or possessary interest in the searched or seized property." Id. at 41.

Appellant contends that he meets both of these requirements by coming before this Court and claiming a proprietary or possessary interest in the automobile. For appellant to have standing to make his Fourth

Amendment claim, it is required that he not disclaim ownership in the automobile at the time of the search. In the case of United States v. Williams, 538 F.2d 549 (4th Cir. 1976), the defendant, when questioned by federal agents, denied ownership of a briefcase and typewriter case found lying on the floor of his motel room. The cases were seized and searched by the federal agents. The FourthCircuit Court of Appeals held as follows:

> "The record, however, shows that defendant voluntarily admitted the agents into his motel room, disclaimed ownership of the brief case and the typewriter case and stated that he had no objection to a search of the cases. His disclaimer is analogous to abandonment and made the cases subject to seizure." Id. at 550, 551.

Thus, United States v. Williams, supra, clearly holds that in order for a defendant to have standing to claim Fourth Amendment protection against unlawful search and seizure he must not disclaim ownership in the thing to be searched at the time the officer questions him as to his interest therein.

The Court in Simpson v. United States, 346 F.2d 291 (10th Cir. 1965), held that defendant in possession

of a stolen vehicle had standing to claim the car was unlawfully searched and seized because his lack of ownership was not established until after the search. The Simpson case is distinguishable from this case in that Simpson claimed a proprietary or possessary interest in the car prior to the search, whereas appellant in the instant case disclaimed such interest.

In Jones v. United States, 362 U.S. 257 (1960), the Supreme Court held that Jones, convicted of possession of narcotics, was not required to claim ownership of the narcotics in order to have standing to question the validity of the search and seizure. To require a claim of ownership would have forced Jones to allege facts sufficient to convict him. However, this is not true in the case before the Court. A claim of a proprietary or possessary interest in the car on the part of appellant would not have been sufficient to convict him of armed robbery.

Appellant therefore, in order to have standing to raise an objection to the alleged unlawful search, had to claim ownership interest in the automobile prior to the search. Having failed to do this, appellant lacks standing to raise the objection at this time.

POINT II

APPELLANT'S VALID CONSENT TO THE WARRANTLESS SEARCH OF THE AUTOMOBILE RENDERS THE SEARCH AND SEIZURE VALID.

Warrantless searches as a general rule are invalid, unless they fall under one of the exceptions recognized by the United States Supreme Court. The Supreme Court in Schneckloth v. Bustamonte, 412 U.S. 218 (1973), recognized a consent search as an exception to the requirements of a search warrant and probable cause.

Appellant in the present case when asked by police officers if he would mind their searching the automobile with Texas license plates, did not object to the warrantless search (Tr.188).

Appellant, prior to his consenting to the search, had been given the Miranda warning (Tr. 26). In Schoor v. State, Okl. Cr., 499 P.2d 450 (1972), the Court of Criminal Appeals for Oklahoma recognized the validity of a consent to search where the consent followed an appropriate Miranda warning. The Court said:

> ". . . if the proper Miranda and Escobedo warnings are given the defendant prior to interrogation and he thereafter, voluntarily and without coercion, gives permission or consent to search, the same is a constitutionally valid consent." Id. at 456.

Appellant in the case before the court after receiving the Miranda warning voluntarily consented to the search of the automobile.

Appellant contends that having denied ownership in the automobile, he thought he was deprived of the right to refuse his consent. Again in Schneckloth v. Bustamonte, supra, the Supreme Court held that knowledge of the right to refuse consent was not a prerequisite to the State proving a voluntary consent. Id. at 249.

Appellant further agrees that his consent to the warrantless search was involuntary in that he had to choose between disclaiming any interest in the automobile and refusing the police permission to search the car. Appellant knew that his possessing a Texas drivers license and a set of keys, which fit the automobile bearing Texas plates, was sufficient to connect him with the automobile, regardless of whether appellant claimed an interest in the car. For appellant to argue that his fear of being connected with the automobile prevented him from claiming an interest in the automobile, which in turn prevented him from refusing his consent, does not make sense. The fact that appellant was so obviously connected with the vehicle would more likely have made appellant refuse his consent in order to prevent the discovery of the incriminating evidence. The facts of this do not support appellant's contention that the consent was involuntary. The Supreme Court again in Schneckloth v. Bustamonte, supra, stated that:

> "When the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances." Id. at 875.

Appellant in the present case argues on the one hand his disclaimer of ownership of the automobile and his consenting to the search thereof, and then on the other hand claiming he has a possessory or proprietary interest in the car and claiming the consent to search was involuntarily given. In view of the obvious connection between appellant and the automobile, the facts of the case support the holding that appellant voluntarily consented to the search.

POINT III

THE SEARCH OF THE AUTOMOBILE WITHOUT WARRANT DID NOT VIOLATE APPELLANT'S FOURTH AMENDMENT RIGHTS, IN THAT EXIGENT CIRCUMSTANCES EXISTED TO WARRANT THE SEARCH ON PROBABLE CAUSE.

The Fourth Amendment of the Constitution requires generally that a valid search warrant based on probable cause be issued by a magistrate, prior to a search and seizure. The United States Supreme Court has recognized certain exceptions to this general rule. The automobile exception was first recognized in Carroll v. United States, 267 U.S. 132 (1924). The court held in that case that an automobile transporting contraband could be searched without a warrant when the search was based on probable cause.

Since Carroll, supra, the warrantless search of an automobile has been held to be valid only when exigent circumstances exist. In Chambers v. Maroney, 399 U.S. 42

(1970), the Court explained what exigent circumstances are sufficient to render a warrantless automobile search valid. In Chambers, supra, defendant and three others were arrested on probable cause while driving in defendant's car on a public road. Defendant was taken into custody and the car was taken to the police station. The car was later searched at the station without a warrant. There was no chance the defendant in that case would take flight from the jurisdiction or remove the car from police custody. The police could easily have obtained a search warrant but instead conducted a warrantless search. In holding the search and seizure valid the Supreme Court stated:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." Id. at 428.

Appellant argues that the required exigent circumstances to support a warrantless search are lacking in the case at bar. As authority appellant cites Coolidge v. New Hampshire, 403 U.S. 443 (1971), where the Supreme Court held a warrantless automobile search invalid. The Coolidge, supra, case is easily distinguished from the present case. The automobile searched in Coolidge, supra, was not on

public property, it was taken from the defendant's private driveway. The defendant, Coolidge, was also a resident of the trial court's jurisdiction (not a transient). In both Chambers, supra, and the instant case, the automobiles were searched and seized on public streets. In the present case, the appellant and the searched automobile were from out of state. These distinguishing facts were recognized in United States v. Pollard, 466 F.2d 1 (10th Cir. 1972). In Pollard, supra, the court distinguished the exigent circumstances in Coolidge, supra from those in Chambers, supra. In Pollard, federal agents had probable cause to believe defendant had attempted to burglarize a bank. Defendant was in his motel room away from his car with the car locked in the motel parking lot. In upholding the warrantless search the court stated:

> ". . . Pollard was a transient, of sorts, hundreds of miles from his home, with his vehicle parked just outside his motel room and readily available for a quick departure. . . . Pollard's Buick was, in our view, a 'fleeting target' of the type alluded to in Chambers and the instant case presents exigent circumstances not present in Coolidge. Accordingly, it is on this basis that we find the search of Pollard's Buick to be a lawful one." Id. at 5.

The Utah Supreme Court in State v. Shields, 28 Utah 2d 405, 503 P.2d 848 (1972), upheld a warrantless automobile search under circumstances similiar to those existing in Pollard, supra, and in the instant case. In Shields the driver of the searched vehicle was arrested in a cafe with the car parked and locked on the street. The police drove the car to the police station and there conducted a warrantless search. The Utah Supreme Court relied on Chambers, supra, in finding that exigent circumstances existed to warrant the search on probable cause.

Appellant in the present case was a transient, driving an out of state vehicle. The automobile was parked on a public street. Other persons had been sitting in the Playmate Lounge with appellant and possibly had keys to the automobile. Clearly exigent circumstances existed to warrant the immediate search of the car.

CONCLUSION

Appellant lacks standing to claim Fourth Amendment protection to the search and seizure, due to his failure to claim a possessary or proprietary interest in the automobile at the time of the search.

Assuming arguendo appellant has standing, the warrantless search conducted by the police was made with the consent of the appellant and was made upon probable cause under exigent circumstances sufficient to render the search valid. Therefore, appellant's request for reversal and remand should be denied.

Respectfully sybmitted,

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